

## IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF HAWAII

**DAVID HOLZMAN,**

Plaintiff,

vs.

**COMMERCIAL FORCED AIR,  
INC., JOHN DOES 1-10, JANE  
DOES 1-10, DOE PARTNERSHIPS  
1-10, DOE CORPORATIONS 1-10,  
DOE ENTITIES 1-10 and DOE  
GOVERNMENTAL UNITS 1-10,**

Defendants.

) CIVIL NO. CV04 00009 SOM-KSC

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DECLARATION OF DAVID HOLZMAN

I, DAVID HOLZMAN, declare as follows:

1. I have personal knowledge of the matters contained herein and I am competent to testify thereto.

2. On or about June 1, 1997, Commercial Forced Air, Inc. ("CFA") and I entered into an oral agreement (the "Agreement"). Under the Agreement, CFA retained my services, as an independent contractor, to act as its exclusive sales agent in the Asia and Pacific region (the "Territory"), to promote, market, and

procure sales of CFA's forced air pre-coolers, refrigerated storage, and pressurized ripening system rooms (collectively, "CFA Products").

3. Under the Agreement, CFA agreed to pay me a commission equal to ten percent (10%) of all sales of CFA Products in the Territory, excluding freight charges, made and/or procured during the term of the Agreement. CFA further agreed to provide me with an accounting of the total sales of CFA Products in the Territory and total commissions due to me as CFA's exclusive sales agent pursuant to the Agreement.

4. In reliance on the Agreement and on CFA's promises made pursuant to the Agreement, I traveled to various countries within the Territory to promote, market, and procure sales of CFA Products, incurred travel costs and in excess of \$60,000.00. I accessed my network of contacts and connections to arrange meetings with potential customers for CFA Products in the Territory, used my marketing skills to promote, market, and procure sales of CFA Products in the Territory, and drafted press releases, service proposals, and e-mail responses to CFA's customers. I also advised CFA on a variety of business issues.

5. CFA designated me as CFA's sales agent for the Territory to third parties and sought my assistance in recommending proposals for the sale of CFA Products to prospective customers in the Territory and in resolving problems.

6. CFA failed and/or refused to provide me with an accounting of the total sales of CFA Products in the Territory and the total commissions due to me as CFA's exclusive sales agent pursuant to the Agreement.

7. CFA owes me the total sum of **\$510,882.00** in commissions for sales of CFA Products in the Territory pursuant to the Agreement. The commissions due me are calculated as follows:

Project Description	Sales of CFA Products		Commissions
Lapanday Foods Corporation - Davao Cold Storage Corporation - The Philippines  4 pre-coolers, 40 pallet capacity, 768-pallet storage room  See Exhibits "A" & "B"	Contract amount Change order Total sales Commission % Project commission	\$667,869.00 <u>\$ 64,518.00</u> \$732,387.00 <u>x 10%</u>	<b>\$73,238.70</b>
Del Monte Fresh Produce N.A., Inc. - Incheon, Korea  10 three-tier pressurized ripening system rooms  See Exhibits "C" & "D"	Contract amount Change order Total sales Commission % Project commission	\$788,000.00 <u>\$ 36,163.75</u> \$824,163.75 <u>x 10%</u>	<b>\$82,416.37</b>

<p>Del Monte Fresh Produce N.A., Inc. - Incheon, Korea - Expansion</p> <p>10 three-tier pressurized ripening system rooms</p> <p>See Exhibits "C" &amp; "D"</p>	<p>Contract amount</p> <p>Change order</p> <p>Total sales</p> <p>Commission %</p> <p>Project commission</p>	<p>\$788,000.00</p> <p><u>\$ 36,163.75</u></p> <p>\$824,163.75</p> <p>x 10%</p>	<p><b>\$82,416.37</b></p>
<p>The Dairy Farm Company Ltd. - Hong Kong</p> <p>3 two tier, and 4, one tier pressurized ripening system rooms</p> <p>See Exhibit "E"</p>	<p>Contract amount</p> <p>Change order</p> <p>Total sales</p> <p>Commission %</p> <p>Project commission</p>	<p>\$595,000.00</p> <p><u>\$ 13,000.00</u></p> <p>\$608,000.00</p> <p>x 10%</p>	<p><b>\$60,800.00</b></p>
<p>Del Monte Fresh Produce (HK) Ltd. - Hong Kong</p> <p>4 two tier, 40 pallet pressurized ripening system rooms, and 4 two tier, 20 pallet pressurized ripening system rooms</p> <p>See Exhibits "D," "F" &amp; "G"</p>	<p>Contract amount</p> <p>Change Order</p> <p>Change order</p> <p>Change order</p> <p>Change order</p> <p>Change order</p> <p>Total sales</p> <p>Commission %</p> <p>Project commission</p>	<p>\$530,000.00</p> <p>\$ 36,385.92</p> <p>\$ 14,500.00</p> <p>\$ 12,000.00</p> <p>\$ 21,605.00</p> <p><u>\$ 2,849.64</u></p> <p>\$617,340.56</p> <p>x 10%</p>	<p><b>\$61,734.06</b></p>

<p>Del Monte Fresh Produce (HK) Ltd. - Hong Kong - Expansion</p> <p>4 two tier, 40 pallet pressurized ripening system rooms</p> <p>See Exhibits "D" &amp; "G"</p>	<p>Contract amount</p> <p>Commission %</p> <p>Project commission</p>	<p>\$298,160.00</p> <p><u>x 10%</u></p>	<p><b>\$29,816.00</b></p>
<p>Davao Agricultural Ventures Corporation (DAVCO) - The Philippines</p> <p>6 one tier, 20 pallet pressurized ripening system rooms</p> <p>See Exhibits "D" and "H"</p>	<p>Contract amount</p> <p>Commission %</p> <p>Project commission</p>	<p>\$512,000.00</p> <p><u>x 10%</u></p>	<p><b>\$51,200.00</b></p>
<p>Tagum Development Corporation (TADECO) - San Vicente Terminal - Davao City, The Philippines</p> <p>3 two tiered cold storage rooms and 3 two tiered forced air pre-cooling rooms</p> <p>See Exhibit "I"</p>	<p>Contract amount</p> <p>Commission %</p> <p>Project commission</p>	<p>\$1,500,000.00</p> <p><u>x 10%</u></p>	<p><b><u>\$150,000.00</u></b></p>
Total Commissions			<b>\$591,621.50</b>
CFA Commission Payments			

Total CFA commission payments	Check No. 6351 Check No. 6254 Check No. 2151 Check No. 6383	\$38,328.70 \$35,000.00 \$ 4,730.80 <u>\$ 2,680.00</u>	<u><b>\$80,739.50</b></u>
See Exhibit "J"			
Commissions Owed			<u><b>\$510,882.00</b></u>

8. Attached hereto as Exhibit "A" is a true and correct copy of my invoice to CFA dated January 28, 1998 for the balance of commissions due for the Lapanday Foods Corporation - Davao Cold Storage Corporation project.

9. Attached hereto as Exhibit "B" is a true and correct copy of the description of the completed Lapanday Foods Corporation - Davao Cold Storage Corporation project posted by CFA on its website under "successful cases."

10. Attached hereto as Exhibit "C" is a true and correct copy of CFA's Billing Log for the Del Monte Fresh Produce N.A., Inc. - Incheon, Korea project.

11. Attached hereto as Exhibit "D" is a true and correct copy of the press releases issued by CFA confirming the ground breaking for and/or completion of the following projects:

- Del Monte Fresh Produce N.A., Inc. - Incheon, Korea project,
- Del Monte Fresh Produce N.A., Inc. - Incheon, Korea Expansion project,

- Del Monte Fresh Produce (HK) Ltd. - Hong Kong project,
- Del Monte Fresh Produce (HK) Ltd. - Hong Kong Expansion project, and
- Davao Agricultural Ventures Corporation (DAVCO) - The Philippines project.

12. Attached as Exhibit "E" is a true and correct copy of CFA's Billing Log for The Dairy Farm Company Ltd. - Hong Kong project.

13. Attached hereto as Exhibit "F" is a true and correct copy of CFA's Billing Log for the Del Monte Fresh Produce (HK) Ltd. - Hong Kong project.

14. Attached hereto as Exhibit "G" is a true and correct copy of CFA's Base Proposal for the Del Monte Fresh Produce (HK) Ltd. - Hong Kong project. Based upon my knowledge and experience, the \$298,160.00 subtotal for "40 pallet sized rooms" on page 4 of Exhibit "G" is an accurate estimate of the contract amount for the 4 two tier, 40 pallet pressurized ripening system rooms Del Monte Fresh Produce (HK) Ltd. - Hong Kong - Expansion project.

15. Attached hereto as Exhibit "H" is a true and correct copy of CFA's Base Proposal for the Davao Agricultural Ventures Corporation (DAVCO) - The Philippines project. Based upon my knowledge and experience, the \$512,000.00 final sales price shown on page 4 of Exhibit "H" is an accurate estimate of the

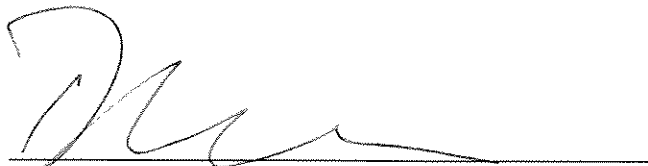
contract amount for the 6 one tier, 20 pallet pressurized ripening system rooms  
Davao Agricultural Ventures Corporation (DAVCO) - The Philippines project.

16. Attached hereto as Exhibit "I" is a true and correct copy of CFA's  
press release posted to its website confirming the completion of the 3 two tiered  
cold storage rooms and 3 two tiered forced air pre-cooling rooms Tagum  
Development Corporation (TADECO) - San Vicente Terminal - Davao City, The  
Philippines project. Based upon my knowledge and experience, I estimate that the  
contract amount for the 3 two tiered cold storage rooms and 3 two tiered forced air  
pre-cooling rooms Tagum Development Corporation (TADECO) - San Vicente  
Terminal - Davao City, The Philippines project would not be less than  
\$1,500,000.00.

17. Attached hereto as Exhibit "J" are true and correct copies of the  
checks received by me from CFA as partial payment of commissions due under the  
Agreement.

18. I declare under penalty of perjury under the laws of the State of  
Hawaii that the foregoing is true and correct.

DATED: Honolulu, Hawaii, July 24, 2006.



DAVID HOLZMAN